

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

BRIAN A. BURTON,)	
)	
Plaintiff,)	New Madrid County Circuit Court
)	Cause No: 20NM-CV00014
vs.)	
)	
SWIFT TRANSPORTATION CO. OF)	Cause No.:
ARIZONA, LLC and CHARLES A. HARRIS,)	
)	
Defendants.)	JURY TRIAL DEMANDED

NOTICE OF REMOVAL

COMES NOW defendant Swift Transportation Co. of Arizona, LLC (“Swift Transportation”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and hereby files this Notice of Removal of the above-captioned civil action from the Thirty-Fourth Circuit Court, New Madrid County, State of Missouri (hereinafter referred to as “the State Court”) to the United States District Court for the Eastern District of Missouri, Southeastern Division.

In support of its Notice of Removal, defendant Swift Transportation states as follows:

I. PROCEEDINGS IN STATE COURT ACTION

1. On January 9, 2020, Plaintiff Brian Burton filed a Complaint in the state court against Defendant Swift Transportation and Defendant Charles Harris (“Harris”) seeking to recover damages for injuries arising out of a motor vehicle accident occurring on January 29, 2016.

2. Plaintiff’s Complaint asserts a claim of negligence in Count I against Defendant Harris and seeks damages allegedly arising out of the motor vehicle accident.

3. Plaintiff's Complaint asserts a claim of *respondeat superior* against Defendant Swift Transportation in Count II based upon the alleged actions of defendant Harris.

4. As a result of the purported negligence of Defendants, Plaintiff's Complaint alleges Plaintiff was seriously injured. (Complaint ¶ 10.)

5. Plaintiff's Complaint further alleges that Plaintiff will incur medical expenses in the future, continue to lose wages, and continue to endure pain and suffering. (Complaint ¶ 10.)

6. Defendant Swift Transportation was served with Summons and Plaintiff's Complaint on May 19, 2020.

7. Defendant Harris has not been served with Summons and Plaintiff's Complaint but is expected to be represented by the undersigned attorney and otherwise consent to this removal.

II. GROUNDS FOR REMOVAL – DIVERSITY JURISDICTION

8. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as the parties are completely diverse and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00).

9. The preceding statement is based upon Plaintiff's allegations that he was "seriously injured" (Plaintiff's Complaint, ¶ 10), that he sustained various injuries to his back and neck, leading to "broken" bones, resulting in "great pain and suffering" (Plaintiff's Complaint, ¶ 10), that his claimed injuries required "surgical repair" and "rehabilitation" (Plaintiff's Complaint, ¶ 11), and that Plaintiff has incurred or will incur both past/future medical care and expenses and past/future wage loss. (Plaintiff's Complaint, ¶ 11, 12.)

10. Based upon the facially apparent nature of Plaintiff's injuries and damages including allegations concerning neck and back injuries, broken bones, surgery, and physical

limitations preventing Plaintiff from working, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000).

**Plaintiff (TN) and Defendants Swift Transportation (AZ/DE) and
Charles A. Harris (NC) are Completely Diverse**

11. Upon information and belief, Plaintiff was at the time of the commencement of this action and ever since has been, and still is, a citizen and resident of the State of Tennessee. (Plaintiff's Complaint ¶ 1.)

12. Defendant Swift Transportation is now, and was at all pertinent times, a Delaware corporation with its principal place of business in the State of Arizona.

a. For purposes of this removal, Defendant Swift Transportation states to the Court that the sole member of Defendant Swift Transportation is Swift Transportation Company, LLC, a Delaware limited liability company with its principal place of business in the State of Arizona.

b. For purposes of this removal, Defendant Swift Transportation states to the Court that the sole member of Swift Transportation Company, LLC is Knight-Swift Transportation Holdings, Inc., a Delaware company with its principal place of business in the State of Arizona.

13. Therefore, pursuant to 28 U.S.C. § 1332(c)(1), Defendant Swift Transportation is deemed a citizen of Delaware and Arizona and all members are also citizens of Delaware and Arizona, respectively.

14. Upon information and belief, Defendant Harris was at the time of the commencement of this action and ever since has been, and still is a citizen and resident of North Carolina. (Plaintiff's Complaint ¶ 3.)

15. For the purposes of diversity, Plaintiff is deemed a citizen of Tennessee and Defendant Swift Transportation is deemed a citizen of Delaware and Arizona, and Defendant Harris is deemed a citizen of North Carolina and thus are completely diverse under § 1332 as “citizens of different States.”

16. Thus and thereby, the diversity requirements of § 1332 are satisfied to invoke the original jurisdiction of this court.

III. THE NOTICE OF REMOVAL IS TIMELY

17. Defendant Swift Transportation was served with Summons and Plaintiff’s Complaint on May 19, 2020.

18. This Notice of Removal is filed in this Court within 30 days after service of Plaintiff’s Complaint on Defendant Swift Transportation and is therefore considered timely under the requirements of 28 U.S.C. § 1446(b).

19. Defendant Harris has not been served in the State Court Action and thus his consent of filing of this Notice of removal is not required under 28 U.S.C. § 1446(b). Following service, his consent to filing in federal court will be provided.

IV. COMPLIANCE WITH LOCAL RULES

20. In accordance with Local Rule 2.02, Defendant Swift Transportation has filed a Civil Cover Sheet, an Original Filing Form, and a Disclosure of Organizational Interests Certificate in addition to its Notice of Removal.

21. In accordance with Local Rule 2.03, a copy of all process, pleadings, orders, and other documents served upon Plaintiff in the State Court Action is being filed with this Notice and is attached as Exhibit A.

22. In accordance with Local Rule 2.03, Defendant Swift Transportation will file a Notice of Removal in the State Court Action after filing its Notice of Removal with this Court and subsequently file proof of such filing and service with this Court.

WHEREFORE, Defendant Swift Transportation Co. of Arizona, LLC prays this Honorable Court accept jurisdiction of the Action and for all other relief this Court deems appropriate under the circumstances.

/s/ Donald L. O'Keefe

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The undersigned hereby certifies that a true and accurate copy of the foregoing has been served on all counsel of record via the CM/ECF filing system and sent via electronic mail on this 17th day of June, 2020.

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/s/ Donald L. O'Keefe